

19-6-424.5 Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

- (1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the director may:
 - (a) issue written orders determining responsible parties;
 - (b) issue written orders apportioning liability among responsible parties; and
 - (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.
- (2)
 - (a) In any apportionment of liability, whether made by the director or made in any administrative proceeding or judicial action, the following standards apply:
 - (i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and
 - (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
 - (b)
 - (i) The burden of proving proportionate contribution shall be borne by each responsible party.
 - (ii) If a responsible party does not prove the responsible party's proportionate contribution, the court or the director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).
 - (c) The court, the board, or the director may not impose joint and several liability.
 - (d) Each responsible party is strictly liable for his share of costs.
- (3) The failure of the director to name all responsible parties is not a defense to an action under this section.
- (4) The director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.
- (5) The director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):
 - (a) have been notified in writing by either the director or the responsible party of the proposed agreement; and
 - (b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.
- (6)
 - (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.
 - (b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).
- (7)
 - (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.
 - (b)
 - (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

- (ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.
- (8)
 - (a) If the director obtains less than complete relief from a party who has resolved his liability under this section, the director may bring an action against any party who has not resolved his liability as determined in an order.
 - (b) In apportioning liability, the standards of Subsection (2) apply.
 - (c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.
- (9)
 - (a) An agreement or order determining liability under this part may provide that the director will pay for costs of actions that the parties have agreed to perform, but which the director has agreed to finance, under the terms of the agreement or order.
 - (b) If the director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.
 - (c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session